IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4679 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAJENDRASINGH J TOMAR

Versus

DIRECTOR GENERAL OF POLICE

Appearance:

Mr. Nirzar Desai for MR YN OZA for Petitioners.

Mr. B.Y. Mankad, AGP for Respondents.

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 19/04/2002

ORAL JUDGEMENT

The petitioners have filed the present petition under Article 226 of the Constitution of India challenging the action of the respondents of appointing them into armed category despite there being special recommendations of the Recruitment Committee which met on 10.1.1990 in Ahmedabad City and, therefore, the said appointment being totally illegal and contrary to the recommendations made by the Special Committee, requires

to be quashed and set aside.

2. The brief facts, as they are found from the petition, are that the respondents had issued an advertisement some where in October 1989 inviting applications for recruitment of combined cadre of armed/unarmed categories of police constables. The petitioners have applied in response to this advertisement and they were called for Optical Test some where in the first week of December 1989 and after undergoing written tests in 2nd/3rd week of December 1989 the petitioners were selected and called on for undergoing special training. It is further stated in the petition that the petitioner No.1 ranked first in the merit list and the petitioner No.2 ranked second in the said merit list. It is further stated that the respondents have selected 156 candidates for recruitment from general category and 34 vacancies were existing for recruitment to general categories at the time of the recruitment.

3. The petitioners have further stated that on 10.1.1990 the meeting of the Recruitment Committee was held for finalising the selection list as per rules and a decision was taken in the said meeting that the 34 candidates who were belonging to general category, as against the existing vacancies, be appointed in unarmed category. It is further averred in the petition that unarmed category being a category which requires recruitment of higher qualified/strong meritorious candidates only, the petitioners' cases were considered for this unarmed category and the petitioners were therefore recommended for appointment against 34 existing vacancies in unarmed branch by the said committee. The petitioners have annexed a copy of the recommendation of the Committee made in the Meeting held on 10.1.1990.

4. The petitioners have further submitted that the respondents have appointed 85 candidates including the petitioners in February 1990 which include 34 candidates of general category in armed branch. Thereafter, 72 more candidates were appointed in unarmed category gradually after an alternate period of 2 months till September 1990. It is submitted that the latter list of 72 candidates prepared by the respondents apparently consisted of the candidates who had their number lower in the merit list prepared by the respondents and despite that being so, the respondents have appointed these persons at a later stage in unarmed category.

5. This Court has earlier issued notice and granted

ad-interim relief in terms of newly added Para 11(cc) whereby during the pendency and final hearing of the petition, the respondents were restrained from making appointment to the post of unarmed police constables. The said ad-interim relief was modified on 20.11.1991 when the Rule was issued and this Court had directed that appointments to the cadre of unarmed constabulary would be subject to the outcome of the present petition.

6. The relief claimed in the petition was objected to by the respondents and an affidavit-in-reply was filed wherein a contention was raised that the respondents had given an advertisement making it clear therein that no post in the cadre of unarmed constabulary was to be filled-up by the persons belonging to unreserved category. It was further submitted in the said affidavit-in-reply that all 186 posts in unarmed constabulary were to be filled-up by the candidates belonging to Scheduled Tribe communities and persons belonging to Socially & Economically Backward Classes. It was further made clear that posts in the armed constabulary were to be filled-up from reserved as well as unreserved categories and 85 posts of unarmed police constables were to be filled-up by persons belonging to unreserved category. It was further submitted that after appointments were made as per advertisement, some more vacancies had arisen and therefore some persons belonging to unreserved category were appointed as unarmed constables as decided by the committee. The respondents have further submitted that prospects for promotion in armed constabulary are much higher than those in unarmed constabulary and that persons working in armed constabulary can earn more income than the persons working in unarmed constabulary. On the basis of several contentions urged by the respondents in their affidavit-in-reply, it was emphatically stated that the petitioners did not have any right to have transfer to any unarmed constabulary after undergoing requisite training as armed constables and even after considering the administrative exigencies, the appointments of the petitioners to the armed constabulary were made and hence no interference should be called for by this Court.

7. The above petition came up for final hearing before this Court in the month of February and several orders were passed calling for certain details as well as seeking certain clarifications from the parties. In the first order dated 1.2.2002, the learned Assistant Government Pleader appearing for the respondents had sought time to verify as to whether the petitioners were shown in the first 34 persons in the select list and as

to whether the minutes of the meeting of the Recruitment Committee held on 10th January 1990 formed part of the record. Mr. Nirzar Desai, learned advocate appearing for Mr. Y.N. Oza, the Senior Advocate for the petitioners had also sought time to verify whether his clients are agreeable for undergoing successful training and examination for unarmed police constables and whether his clients were prepared to forego seniority which they were having in the cadre of armed constables. On 15.2.2002, another order was passed by this Court, wherein it was recorded that the reply was not filed on behalf of the respondents and though the officers had come they had not brought any record with them. This Court had, therefore, directed the D.G.P. to file an affidavit submitting his explanation as to whether the record pertaining to the case was traced out in such a manner so that the assistance is provided to the Court as and when desired. Thereafter, an additional affidavit sworn on 6th March 2002 was filed. In Para 4 of the said additional affidavit-in-reply it was stated that the select list of 156 candidates in general category would be produced at the time of hearing of this petition. However, on 12.4.2002, when this petition came up for hearing, this Court had asked the learned A.G.P. to produce the select list of 156 candidates. A list was produced but it did not contain the details regarding the ranks and/or marks given to the respective applicants. It is important to note here that necessary details were not produced by the respondents and as against that, the petitioners have filed their undertaking before this Court on 8th February 2002 wherein it was specifically stated that the petitioners were ready to forego seniority of their service from the date of joining till now in the armed police constable cadre, if this Court directs the respondents to put them in unarmed branch. The petitioners have also undertaken that their seniority as 'constable'in unarmed branch may be considered from the date of joining as 'Police Constable' in unarmed branch. The petitioners have also undertaken to undergo training meant for Police Constable unarmed branch, if any required. Considering the earlier orders passed by this Court as well as the undertaking of the petitioners, this Court directed the respondents to depute any senior person from their office and to remain personally present on 19th April 2002 with all necessary records pertaining to the subject matter of the petition. Accordingly, Mr. Pramod Kumar, Additional Police Commissioner, remained present today in the Court and he had brought with him a file containing the relevant papers including the list of 156 candidates with the marks which they have obtained in the examination. From the said list, it is clear, that

the petitioner No.1 obtained 45 marks and stood first, the petitioner No.2 obtained 42 marks and stood second, and the petitioner No.6 obtained 38 marks and stood sixth. Thus, all the three petitioners were amongst the list of first 34 candidates of general categories. It is specifically stated in the Minutes of Meeting of the Recruitment Committee held on 10.1.1990 which is reproduced as under:

> "156 candidates have finally been selected. Out of this, the first 34 would be given appointment against the vacancies of unarmed branch. At present 100 vacancies of armed police are existing in general category. Therefore next 100 would be appointed as armed policemen. In addition to this, remaining 22 would be absorbed against the unfilled vacancies of armed branch reserved for ex-army personnel."

On the basis of the above recommendations of the Recruitment Committee, the petitioners ought to have been appointed against the vacancies of unarmed branch. Despite this, appointment orders were issued on 13.2.90 appointing the petitioners in the category of Armed Branch of Police Constabulary. This Court has, therefore, no hesitation in coming to the conclusion that these appointments of the petitioners to the Armed Branch of Police Constabulary are contrary to the decision taken by the Recruitment Committee on 10.1.1990. This Court normally would not interfere in the recruitment policy framed by the respondents. However, the petitioners have made out a case ventilating their legitimate grievance at an appropriate time and have also undertaken to forego their seniority as well as they have shown their willingness to undergo the training and hence considering these special facts, it is held that the petitioners are entitled to be posted as Unarmed Police Constables. The respondents are, therefore, directed to pass consequential orders of posting of these petitioners as Unarmed Police Constables within a period of three months from the date of receipt of the writ of this order. While passing such orders, the respondents are directed to take note of the undertaking filed by the petitioners before this Court whereby they have shown their willingness to forego their seniority in the Armed Branch as well as they have also shown their willingness to undergo the requisite training.

8. It is made clear that looking to the special facts and circumstances of the case, this Court has taken

the above view and this may not be treated as precedent. With the above directions, the petition is disposed of. Rule is made absolute to the above extent with no order as to costs.

rmr. [K.A. Puj, J.]